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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,009	04/20/2001	Steven Duane Myers	1475	2733

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EXAMINER

CONTEE, JOY KIMBERLY

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,009

Applicant(s)

MYERS, STEVEN DUANE

Examiner

Joy K Contee

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed February 19, 2004 have been fully considered but they are not persuasive. Applicant argues that Busuioc (US Pat. No. 6,151,309) suggests that the broadband service is already provided to the user (i.e., mobile device) and that Busuioc does not teach determining a qualification of a communication device to receive a broadband wireless service. Examiner disagrees. Busuioc teaches that a user requests service as it travels between fixed and mobile networks (see col. 3, lines 15-36). Busuioc inherently determines qualification of a communication device since Busuioc continuously updates resource configuration to deal with changes of delivery point due to the customer's mobility (see col. 4, lines 7-13). Further, Busuioc discloses that at least one user will have access to one or both of the networks (see col. 3, lines 20-29). This disclosure anticipates that a communication device is qualified before services could be rendered, such that the customer is able to access stored data, e.g., text file or image) (see col. 3, lines 23-29).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4,6-7,10-14,16-18,21-24 and 27-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Busuioc et al. (Busuioc), U.S. Patent No. 6,151,309.

Regarding claims 1 and 12, Busuioc discloses a software product (and method) for qualifying communication devices for broadband wireless services, comprising:

qualification software (i.e., reads on intelligent software systems or agents) configured when executed by at least one processor to direct the at least one processor to identify requirements (i.e., bandwidth availability) of a broadband wireless service, execute an application to determine configuration information for a first communication device (mobile), and perform a comparison of the configuration information to the requirements of the broadband wireless service to determine if the first communication device is qualified to receive the broadband wireless service (col. 1, lines 47-63 and col. 4, lines 7-13 and col. 6, lines 36-41); and

ia software storage medium (i.e., inherently the software system or agent is stored as it has a distributed architecture) configured to store the qualification software (col. 1, lines 47-55).

Regarding claims 2 and 13, Busuioc the software product of claims 1 and 12, wherein a second communication device (i.e., reads on "another agents") is configured to execute the qualification software to:

identify the requirements of the broadband wireless service (col. 4, lines 7-13);
transmit the application to the first communication device (col. 4, lines 47-53);

receive the configuration information from the first communication device (col. 4, lines 7-13); and

perform the comparison to determine if the first communication device is qualified to receive the broadband wireless service (col. 3, line 60 to col. 4, line 13).

Regarding claims 3 and 14, Busuioc discloses the software product of claim 2 and 13, wherein the first communication device is configured to execute the qualification software to:

receive the application from the second communication device (col. 3, lines 60-67);

execute the application (i.e., reads on establish service) to determine the configuration information (col. 6, lines 36-39); and

transmit the configuration information (i.e., reads on service implemented) to the second communication device (col. 6, lines 36-42).

Regarding claims 4 and 15, Busuioc discloses the software product of claims 3 and 14, wherein the second communication device is configured to execute the qualification software to:

generate results based on the comparison (i.e., reads on examines the current traffic load in the cell); and transmit the results, the configuration information, and the requirements to the first communication device for display by the first communication device (col. 8, line 66 to col. 9, line 10).

Regarding claims 6 and 17, Busuioc discloses the software product of claims 1 and 13 wherein a second communication device is configured to execute the

qualification software to: identify the requirements of the broadband wireless service; and (col. 4, lines 7-13); transmit the application to the first communication device (col. 4, lines 47-53).

Regarding claims 7 and 18, Busuioc discloses the software product of claims 6 and 17, wherein the first communication device is configured to execute the qualification software to:

receive the application from the second communication device (col. 3, lines 60-67);

execute the application (i.e., reads on establish service) to determine the configuration information (col. 6, lines 36-39); and

generate results based on the comparison (i.e., reads on examines the current traffic load in the cell); and transmit the results, the configuration information, and the requirements to the first communication device for display by the first communication device (col. 8, line 66 to col. 9, line 10).

Regarding claims 10 and 21, Busuioc discloses the software product of claims 1 and 12, wherein the qualification software is further configured to direct the at least one processor to determine upgrades for the first communication device based on the comparison.

Regarding claims 11 and 22, Busuioc discloses the software product of claim 10 wherein the qualification software is further configured to direct the at least one processor to determine business information for businesses that provide the upgrades (col. 9, lines 3-17).

Regarding claim 23, Busuioc discloses a communication device qualification system, as applied in the other independent claims 1 and 12 and additionally discloses an interface configured to receive the application from the processing system, transmit the application to the first communication device, receive the configuration information from the first communication device, and transfer the configuration information to the processing system (col.3, lines 52-59).

Regarding claim 24, Busuioc discloses the communication device qualification system of claim 23 wherein the processing system is further configured to generate results based on the comparison and wherein the interface is further configured to transmit the results, the configuration information, and the requirements to the first communication device for display by the first communication device (col. 9, lines 3-10).

Regarding claim 27, Busuioc discloses the communication device qualification system of claim 23 wherein the processing system is further configured to determine upgrades for the communication device based on the comparison (i.e., reads on based on range of offered services) (col. 9, lines 1-16).

Regarding claim 28, Busuioc discloses the communication device qualification system of claim 27 wherein the processing system is further configured to determine business information for businesses that provide the upgrades (col. 9, lines 1-16).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5,8,9,15,19,20,25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busuioc, in view of Mayo et al. (Mayo), U.S. Patent No. 6,529,936.

Regarding claims 5 and 15, Busuioc discloses the software product of claims 4 and 14 but fails to disclose wherein a second communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText transfer Protocol (HTTP) format.

In a similar field of endeavor, Mayo discloses wherein a second communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText transfer Protocol (HTTP) format (col. 4, lines 36-43).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include configuration information in HTTP format for the purpose of implementing Internet technologies as is known in the art.

Regarding claims 8, 19 and 25, Busuioc discloses the software product of claims 7, 18 and 23, but fails to disclose wherein the first communication device is configured to execute the qualification software to format the results, the configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format.

In a similar field of endeavor, Mayo discloses wherein the first communication device is configured to execute the qualification software to format the results, the

configuration information, and the requirements based on HyperText Transfer Protocol (HTTP) format(col. 4,lines 36-43).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include configuration information in HTTP format for the purpose of implementing Internet technologies as is known in the art.

Regarding claims 9, 20 and 26, Busuioc discloses the software product of claims 1,12, and 24 but fails to disclose wherein the application comprises an applet.

In a similar field of endeavor, Mayo discloses wherein the application comprises an applet (col. 9, lines 1-5).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Busuioc to include an applet user interface object for accessing an URL as is known in the art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

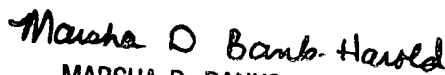
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K Contee whose telephone number is 703-308-0149. The examiner can normally be reached on 5:30 a.m. to 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703-305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.


Joy Contee

May 1, 2004


MARSHA D. BANKS-HAROLD
SUPERVISORY PATENT EXAMINER
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